



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 6060323

Date: JAN. 31, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a historical architect, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition and a subsequent motion, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that she is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The Director found that the Petitioner qualified as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we find that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the *Dhanasar* analytical framework.

The Petitioner indicated that she intends to continue her work aimed at restoring and preserving government and religious buildings. She stated that her proposed work involves "serving as a historical consultant on building remodeling" for the [redacted] Council of America [redacted]. The Petitioner further explained that she plans to advise [redacted] on [redacted] cultural elements for a number of their community centers including: [redacted] Food Education Center, Community Service Center, [redacted] Faith Center and Museum, and more." The record includes a letter from [redacted] president of [redacted], requesting the Petitioner's services "to provide concept design consultation for remodeling of [redacted]'s buildings, with reference to [redacted] cultural elements, including coordination of implementation, liaising with suppliers and contractors to ensure the quality of the end result; and also custom design of [redacted] exhibition displays."⁴ [redacted] further noted that [redacted] "owns five commercial buildings with 75,000 square feet area, located in [redacted] metropolitan area."

In addition, the Petitioner provided a letter from [redacted] a senior archeologist with the [redacted]'s Heritage and Historic Preservation Department, stating that the Petitioner and a colleague were under consideration for a project involving "the [redacted] School that was built around 1935." [redacted] requested their assistance with "documentation of the three existing historical buildings, particularly building no. 302, which has architectural decorative works which we would like to preserve and document before demolishing it." She also sought "recommendations for reusing those materials which will be available after demolishing and reusing them for the construction of our new building."

The record includes documentation about historic preservation from the National Institute of Building Sciences, a report from the National Trust for Historic Preservation discussing United States cultural heritage tourism, information about the Society of Architectural Historians from its website, and an article concerning cultural conservation from the American Institute for Conservation of Historic and Artistic Works. The Petitioner also submitted articles about the value of preserving [redacted] cultural

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for her to have a job offer from a specific employer. However, we will consider information about her current and prospective positions to illustrate the capacity in which she intends to work in order to determine whether her proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

artifacts, the key role of the arts in U.S. society, the creation of the National Endowment for the Humanities, and the economic impact associated with historic preservation. Additionally, the record contains an article about problems facing schools funded by the U.S. Bureau of [redacted] Education, and information about the opening of [redacted]'s [redacted] Center (Illinois) and its community programs. The Petitioner also provided language from the Historic Sites Act of 1935, a blog offering practical reasons for saving aging buildings, a webpage from the National Register of Historic Places displaying various dwellings, an article about the value of preserving historical buildings and making them sustainable, and information about the architectural historian profession. The record therefore shows that the Petitioner's proposed remodeling and preservation consulting work for [redacted] and [redacted] School has substantial merit.

Furthermore, the Petitioner presented letters of support which she claims show the national importance of her proposed work.⁵ For example, [redacted] a retired real estate developer, asserted that the Petitioner "has an interest in American [redacted] Culture" and that "the combination of her cultural sensitivity, architectural talent and project management skills has the potential to offer significant contributions to the restoration and preservation of imperiled historic American [redacted] monuments." Likewise, [redacted] an art history professor at University of [redacted] stated that the Petitioner's "skill in recreating designs based on scholarly research . . . has universal relevance and is something that can be applied in any given cultural environment. [The Petitioner] would therefore be able to contribute to preserving the cultural heritage of the United States of America and would without doubt be an asset to the nation." Similarly, [redacted] associate professor at [redacted] University, contended that the Petitioner's projects "safeguard historical structures for the benefit of future generations" and are "of importance to the United States."

In determining national importance, the relevant question is not the importance of the industry, field, or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." See *Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of her work. Although the Petitioner's documentation reflects her intention to provide valuable building remodeling and historical architecture consulting services for [redacted] and [redacted] School, she has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. In *Dhanasar* we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we find the record does not show that the Petitioner's proposed endeavor stands to sufficiently extend beyond her clientele to impact her field or U.S. cultural interests more broadly at a level commensurate with national importance.

⁵ We discuss only a sampling of these letters, but have reviewed and considered each one.

Furthermore, the Petitioner has not demonstrated that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to her future work for [] and [] School, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's projects would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id.* at 890. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we find that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.